

**ATTORNEY DOCKET NUMBER: 2002834-0222 (Bacterial Delivery DIV1)**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Caplan, <i>et al.</i>	Examiner:	Not yet assigned
Serial No.:	Not yet assigned	Art Unit:	Not yet assigned
Filing Date:	December 4, 2003		
Title:	MICROBIAL DELIVERY SYSTEM		

**CERTIFICATE OF MAILING**

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Date of Deposit: December 4, 2003

I hereby certify that this correspondence is being deposited with the United States Postal Service as "*Express Mail Post Office to Address*" service under 37 CFR 1.10 on the date indicated above and is addressed to: Mail Stop Patent Application, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

  
KATHY HART GAGNON

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**INFORMATION DISCLOSURE STATEMENT**

Pursuant to the duty of disclosure under 37 C.F.R. §§1.56, 1.97 and 1.98, Applicant requests consideration of this Information Disclosure Statement.

**Type of Statement**

The present Information Disclosure Statement is:

- ☒ An *original* Information Disclosure Statement; or
- ☐ A *supplemental* Information Disclosure Statement.

**Compliance with 37 C.F.R. §1.97**

The present Information Disclosure Statement is being filed:

- ☒ Pursuant to 37 C.F.R. §1.97(b); no fee or certification is required:
- ☒ Within three months of the filing date of a national application other than a continued prosecution application under §1.53(d);
- ☐ Within three months of the date of entry of the national stage as set forth

in §1.491 in an international application;

☒ Before the mailing of a first Office action on the merits; or

☐ Before the mailing of a first Office action after the filing of a request for continued examination under §1.114.

☐ Pursuant to 37 C.F.R. §1.97(c) after the dates listed above but before the mailing date of any of a final action under §1.113, a notice of allowance under §1.311, or an action that otherwise closes prosecution in the application; Applicant hereby *either*:

☐ Certifies that *either*:

☐ Each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or

☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in §1.56(c) more than three months prior to the filing of the information disclosure statement; or

☐ Includes herewith the fee set forth in §1.17(p).

☐ Pursuant to 37 C.F.R §1.97(d), after the mailing date of any of a final action under §1.113, a notice of allowance under §1.311, or an action that otherwise closes prosecution in the application; Applicant hereby *both*:

☐ Certifies that *either*:

- ☐ Each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or
- ☐ That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in §1.56(c) more than three months prior to the filing of the information disclosure statement; and
- ☐ Includes herewith the fee set forth in §1.17(p).

**Content of the Information Disclosure Statement**

Applicant hereby makes of record in the above-identified application the reference(s) listed on the attached form PTO-1449 (modified). The order of presentation of the references should not be construed as an indication of the importance of the references.

Applicant includes copies of references as indicated below:

- ☐ A copy of each cited reference not indicated with an asterisk is included;

- ☒ Copies of references indicated with an asterisk on the attached form PTO-1449 are not included pursuant to 37 C.F.R. §1.98(d) because they were previously provided to the United States Patent Office in an Information Disclosure Statement that complies with 37 C.F.R. §1.98(a)-(c) and was submitted in the following patent application that is relied upon in the present case for an earlier effective filing date under 35 U.S.C. §120:

Serial Number	Filing Date	Status
09/731,375	December 6, 2000	Pending

- ☐ Copies of English translations of one or more non-English references are included.

Applicant hereby makes the following additional information of record in the above-identified application:

Applicant certifies that the Information Disclosure Statement *either*:

- ☐ Does not contain non-English language citations;
- ☐ Does contain non-English language citations, of which the following is a concise explanation:
- ☐ Includes one or more translations of a non-English citation.

### **Remarks**

The submission of this Information Disclosure Statement should not be construed as a representation that a search has been made.

The submission of this Information Disclosure Statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in §1.56(b).

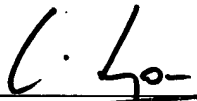
The submission of this Information Disclosure Statement shall not be construed as a representation that the information cited in the Statement is, or is considered to be, in fact, prior art as defined by 35 U.S.C. §102.

It is respectfully requested that:

1. The Examiner consider completely the cited information, along with any other information, in reaching a determination concerning the patentability of the present claims;
2. The enclosed form PTO-1449 be signed by the Examiner to evidence that the cited patent(s) and publication(s) has (have) been fully considered by the Patent and Trademark Office during the examination of this application; and
3. The citations for the patent(s) and publication(s) be printed on any patent which issues from this application.

Notwithstanding any statements by Applicants, the Examiner is urged to form his or her own conclusions regarding the relevance of the cited reference(s).

Respectfully submitted,

  
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Charles Lyon Ph.D.  
Agent for Applicant  
Limited Recognition Under 37 CFR §10.9(b)

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Dated: December 4, 2003

Form PTO-1449 U.S. Department of Commerce (REV. 8-83) Patent and Trademark Office  INFORMATION DISCLOSURE STATEMENT  (Use several sheets if necessary)	Atty. Docket: 2002834-0222	In re Application No.: NYA
	Applicants: Caplan, <i>et al.</i>	
	Filing Date: December 4, 2003	Group: NYA

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	*3,645,852	Axen, et al.	February 29, 1972	195	68
	*3,720,760	Bennich et al.	February 7, 1984	436	51.3
	*4,171,299	Hamburger	October 16, 1979	260	112.5
	*4,338,297	Michael et al.	July 6, 1982	424	91
	*4,469,677	Michael et al.	September 4, 1984	424	91
	*4,535,010	Axen et al.	August 13, 1985	427	246
	*4,579,840	Hahn et al.	April 1, 1986	514	14
	*4,659,678	Forrest et al.	April 21, 1987	436	512
	*4,696,915	Horecker	September 29, 1987		
	*4,816,449	Hahn et al.	March 28, 1989	514	17
	*4,849,337	Calenoff et al.	July 18, 1989	435	7
	*4,900,556	Wheatley, et al.	February 13, 1990	424	450
	*5,026,545	Saint-Remy et al.	June 25, 1991		
	*5,049,390	Wojdani	September 17, 1991	424	450
	*5,091,318	Anawis et al.	February 25, 1992	436	513
	*5,169,933	Anderson et al.	December 8, 1992	531	391.3
	*5,314,991	Oka et al.	May 24, 1994	530	350
	*5,449,669	Metcalfe et al.	September 12, 1995	514	13
	*5,480,972	Avjioglu et al.	January 2, 1996	530	379
	*5,486,452	Gordon et al.	January 23, 1996	435	5
	*5,496,554	Oka et al.	March 5, 1996	424	276.1
	*5,543,144	Chang	August 6, 1996	424	133.1
	*5,547,669	Rogers et al.	August 20, 1996	424	185.1
	*5,558,869	Burks, Jr. et al.	September 24, 1996	424	276.1
	*5,583,046	Valenta et al.	December 10, 1996	435	320.1
	*5,591,433	Michael et al.	January 7, 1997	424	184.1
	*5,597,895	Gaynor et al.	January 28, 1997	530	324
	*5,616,559	Androphy et al.	April 1, 1997	514	12
	*5,625,039	Washida et al.	April 29, 1997	530	388.25
	*5,637,454	Harley	June 10, 1997	435	5
	*5,648,242	Valenta et al.	July 15, 1997	435	69.3
	*5,652,122	Frankel et al.	July 29, 1997	435	69.7

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	*5,667,965	Androphy et al.	September 16, 1997	435	5
	*5,670,617	Frankel et al.	September 23, 1997	530	300
	*5,674,980	Frankel et al.	October 7, 1997	530	350
	*5,693,495	Breiteneder et al.	December 2, 1997	435	69.3
	*5,710,126	Griffith et al.	January 20, 1998	514	12
	*5,731,157	Miller et al.	March 24, 1998	435	7.4
	*5,736,149	Avjioglu et al.	April 7, 1998	424	275.1
	*5,747,641	Frankel et al.	May 5, 1998	530	300
	*5,773,003	Swain et al.	June 30, 1998	424	193.1
	*5,786,466	Breiteneder et al.	July 28, 1998	536	23.6
	*5,804,604	Frankel et al.	September 8, 1998	530	324
	*5,807,746	Lin et al.	September 15, 1998	435	375
	*5,820,862	Garman et al.	October 13, 1998	424	184.1
	*5,837,550	Breitenbach et al.	November 17, 1998	436	513
	*5,843,672	Morgenstern et al.,	December 1, 1998	435	7.1
	*5,843,710	Cobon et al.	December 1, 1998	435	69.1
	*5,869,040	Oin	February 9, 1999	424	93.21
	*5,888,762	Joliot et al.	March 30, 1999	435	69.1
	*5,891,716	Morgenstern et al.,	April 6, 1999	435	325
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	*5,973,121	Burks, Jr., et al.	October 26, 1999	530	370
	*5,989,814	Frankel et al.	November 23, 1999	435	6
	*5,998,583	Korsmeyer	December 7, 1999	530	350
	*6,008,340	Ball et al.	December 28, 1999	536	23.6
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	*07/998,377		December 30, 1992		
	*08/158,704		November 29, 1993		
	*08/610,424		March 4, 1996		
	*09/015,657		January 28, 1999		
	*09/336,463		June 18, 1999		
	*60/009,455		December 29, 1995		
	*08/610,424		March 4, 1996		
	*08/717,933		September 23, 1996		
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	*09/267,719		March 11, 1999		
	*60/073,283		January 31, 1998		
	*60/074,690		February 13, 1998		
	*60/074,624		February 13, 1998		
	*60/074,633		February 13, 1998		
	*09/241,101		January 29, 1999		
	*09/248,673		February 11, 1999		
	*09/248,674		February 11, 1999		
	*60/073,171		January 30, 1998		
	*09/238,448		January 28, 1999		
	*09/090,375		June 4, 1998		
	*09/141,220		August 27, 1998		
	*09/478,668		January 6, 2000		
	*09/240,557		January 29, 1999		
	*60/122,450		March 2, 1999		
	*60/112,452		March 2, 1999		
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	*09/494,096		January 28, 2000		
	*60/090,390		June 23, 1998		
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				Yes	No
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	*EP 0684812	Europe	21 January 1998		
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	*WO 94/10194	International	11 May 1994		
	*WO 94/24281	International			
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	*WO 95/34578	International	21 December 1995		
	*WO 96/36880	International	21 November 1996		
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	*WO 98/32866	International	30 July 1998		
	*WO 99/34826	International	15 July 1999		
	*WO 99/38978	International	8 May 1999		
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	*Ansari, et al., "An Investigation of Human Response to Perennial Ryegrass", <i>J. Allergy Clin. Immunol.</i> <b>80</b> : 229-235, 1987.				

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